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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,689	09/08/2003	Thomas J. Coleman		8579
7590	08/23/2005		EXAMINER	
Melvin L. Crane 318 S. Cleveland Street Arlington, VA 22204-2038				BRUENJES, CHRISTOPHER P
		ART UNIT	PAPER NUMBER	1772

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/656,689	COLEMAN ET AL.
	Examiner Christopher P. Bruenjes	Art Unit 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Roth (USPN 4,078,330).

Regarding claim 1, Roth anticipate a bendable tube (reference number 10, Figure 1) of any desirable length, which is formed of a material which can be bent or twisted into a desired shape, in which the tube retains its bent or twisted shape to provide an enjoyable tube (see abstract and Figure 1).

Regarding claim 2, the bendable tube is formed as a piece of jewelry such as bracelet around an arm or leg of a child or adult (col.1, l.20-25). Regarding claims 3 and 4, the tube includes a stopper (reference number 14, Figure 1) on opposite ends of the tube. Regarding claims 5 and 6, the tube includes a ball, which is a substance therein for use upon being dispensed from said tube, because the ball can be used as projectile like

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any other ball (col.2, 1.19-21). Regarding claims 7 and 8, the substance is a product, which can be filled into and dispensed from said tube, since the stoppers on either end can be threaded in and out of the tube.

2. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Im et al (USPN 4,965,135).

Regarding claim 1, Im et al anticipate a bendable tube of any desirable length, which is formed of a material which can be bent or twisted into a desired shape, in which the tube retains its bent or twisted shape to provide an enjoyable tube (col.2, 1.8-13 and 22-27). Regarding claim 2, the bendable tube is formed as a tube for a use, which meets the limitation "or any other use". Regarding claims 3 and 4, the tube includes a stopper on opposite ends of the tube, represented by the twisted end that stops the food item from escaping from the tube (col.2, 1.23-27). Regarding claims 5 and 6, the tube includes a substance therein for use upon being dispensed from said tube, (col.2, 1.25-27). Regarding claims 7 and 8, the substance is a food item or a candy product (col.2, 1.25-27).

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**Conclusion**

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Coleman et al (USPN 5,938,153); Horvath (USPN 3,517,884); Harris (USPN 6,454,128); Chen et al (US 2004/0109932 A1); Carwile (USPN 2,577,309); Ganson (USPN 5,916,006); Lloyd (USPN 6,638,549).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB CPB  
August 16, 2005

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER

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8/19/05